IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6458 OF 2003

1. A.R.Khan Construwell Company. ... Petitioner.

V/s.

1. Youth Education & Welfare
Society, Nashik.

2. Silver Realtors Pvt.Ltd.

3. National (India) Contractors
& Engineers.

4. Al-Haj Ajmal Sarfaraj Khan.

5. Wasim Sujauddin Pirjada.

6. M/s.Suyojit Buildtech Pvt.Ltd.

7. The Joint Charity Commissioner,
Nashik Region, Nashik.

8. State of Maharashtra. ... Respondents.

WRIT PETITION NO. 6459 OF 2003

1. Ahmed Dagumiya Shaikh,

2. Murtaz Abdul Razak Chanegav,

3. Abdul Razak N. Chanegaon,

4. Rafique N. Chanegav,

5. Iqbal Gafoor Shaikh. ... Petitioners.

V/s.

1. New Education and Welfare
Society, Nasik.

2. Silver Realtors Pvt.Ltd.

3. National (India) Contractors
& Engineers.

4. Al-Haj Ajmal Sarfaraj Khan.

5. Wasim Sujauddin Pirjada.

6. A.R.Khan, Construwel Company.

7. M/s.Suyojit Builttech Pvt.Ltd.

8. The Joint Charity Commissioner,
Nashik Region, Nashik.

9. State of Maharashtra. ... Respondents.

WRIT PETITION NO. 6518 OF 2003

1. Al-Haj Ajmal Sarfaraj Khan.

2. Wasim Sujauddin Pirjada. ... Petitioners.

V/s.

1. Youth Education & Welfare
Society, Nashik.

2. Silver Realtors Pvt.Ltd.

3. National (India) Contractors
& Engineers.

4. A.R.Khan Construwell Company.

5. M/s.Suyojit Buildtech Pvt.Ltd.

6. The Joint Charity Commissioner,
Nashik Region, Nashik.

7. State of Maharashtra. ... Respondents.

S.S.Kulkarni for the appellant (in W.P.No.6458/03)

Ravi Kadam with Kiran Bapat for the appellant (in W.P.No.6459/03)

S.G.Deshmukh for the appellants (in W.P.No.6518/03)

M.H.Shah, senior counsel with R.V.More and S.A.Sawant for the Trust (Youth Education & Welfare Society)

V.R.Manohar, senior counsel with V.A.Gangal, Harshad Deshpande, Amit

Sakalikar, Ulhas Naik and Amit Karande for the Builder and Developer (M/s.Suyojit Buildtech Pvt.Ltd.)

CORAM : V.C.DAGA, J.

RESERVED ON : 18th August, 2004.

PRONOUNCED ON: 1st October, 2004.

JUDGMENT :
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. These writ petitions have been filed against the common order dated 26th June, 2003 passed by the Joint Charity Commissioner, Nasik, whereby Application No.21 of 2002 taken out by Youth Education and Welfare Society, Nasik (the "Trust" for short) under section 36(1)(b) of the Bombay Public Trusts Act, 1950 (the "Trust Act" for short) came to be allowed and decision taken by the said Trust to develop Trust property for through respondent No.7 (in Writ Petition No.6549/2003), viz., M/s.Suyojit Builders Pvt.Ltd. (the "Builder and Developer" for short) came to be affirmed.

2. As the principal arguments were addressed in the case of M/s.Ahmed Dagumiya Shaikh and others v/s. Youth Education and Welfare Society and others (W.P.No.6459/2003) by Shri Ravi Kadam assisted by Shri K.S.Bapat, Advocate, I propose to refer to the relevant facts appearing in that case, for the sake of convenience.

Introduction of Litigation :
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3. The introduction of litigation, based on more or less undisputed facts, is that the respondent No.1 - Trust is a public Trust bearing registration No.F-1892 having its registered office at Nashik.

4. The then Government of Bombay granted land bearing Survey No.643-B corresponding to C.T.S.No.614-B corresponding to final Plot No.TPS-I-Nashik having area of about 4,000 sq.mtrs. situate opposite to Central Bus Stand and District Court, Nashik within the limits of Nashik Municipal Corporation, Nashik ("suit property" for short).

5. The General Body of the Trust passed resolution and decided to develop the said property under the Sanad granted to the Trust sometime in the year 1994-95. Sanction was granted to construct 1/4th area for construction of Muslim Hostel for boys. Accordingly, hostel was constructed for 35 students. Considering the present precarious condition of the structure, demand to accommodate more students upto the capacity of about 200 students and its commercial potential, the Trust decided to exploit the said property in consonance with the object of the Trust which, inter alia;

provides (a) to start and maintain schools, colleges, hostels, libraries, educational institutions, technical; medical; agricultural and polytechnic education etc.; (b) to award scholarship and/or other awards to the deserving students; (c) to arrange for supply of books, stationary etc. to the students; (d) to start dispensaries, hospitals, medical centres; (e) to arrange for sports, programmes for students and others.

6. The Executive Committee of the Trust in its meeting held on 22nd June, 2002 resolved to develop the said Trust property having the hostel premises and also resolved to appoint one Shri S.L.Deshpande, Advocate and M/s.Deore - Dhamne, Architects to prepare tender documents and also decided to publish tender notices in the Indian Express (Mumbai) and Gavkari (Nashik). Accordingly, tender notices appeared in the said newspapers published on 12th July, 2002.

7. The tender form for due approval of the General Body were placed in a meeting held on 16th July, 2002 and the same were approved by it.

8. The last date for sale of tender forms was 27th July, 2002. 14 tender forms were sold for

Rs.10,000/- each. None of the petitioners have purchased tender forms nor did they submit tenders to compete with others.

9. The General Body meeting held on 29th July, 2002 resolved to authorise Executive Committee to enter into an agreement with the developer offering highest bid. The last date for acceptance of tenders was 5th August, 2002. By this date, total eight (8) tenders were received by the office of the Trust.

10. The tenders were opened on 6th August, 2002 in the presence of seven (7) Executive Members, twelve (12) members of General Body and seven (7) other eminent persons from the city of Nasik. All the developers and/or tenderers with their respective representatives were also present. Four (4) tenders out of eight (8) were rejected due to disqualification. None of them have challenged their disqualification. The rates offered by remaining four tenderers were as under:

(1) M/s.Suyojit Buildtech (P) Ltd.

Rs.1,591/- per sq.ft.

(2) M/s.Samath Enterprises

Rs.1,550/- per sq.ft.

(3) M/s.Thakkar Developers

Rs.1,451/- per sq.ft.

(4) M/s.Sainath Enterprises

Rs.1,550/- sq.ft.

11. It appears that, after opening and knowing the rates, the rates were negotiated by the Trust with M/s.Suyojit Buildtech (P) Ltd., who, ultimately, appears to have agreed to increase their rate from Rs.1,591/- to Rs.1,678.60 and also agreed to provide solid construction with basement and ground + three upper floors, out of which they agreed to hand over:-

(i) Underground pay and park portion admeasuring 14,352 sq.ft. to the trustees so that the Trust can generate regular income from the same;

(ii) Top floor of the building having the built-up area of 9,568 sq.ft. to the Trust to accommodate about 200 students so as to enable the Trust to fulfil the object of the Trust.

It, thus, appears that M/s.Suyojit Buildtech Pvt.Ltd. agreed to pay:

(i) Cash component enhanced from Rs.6,74,56,219 to Rs.7,25,00,000/-;

(ii) the Nazarana to the Government for conversion amounting to Rs.2,00,13,600/-;

(iii) entire stamp duty, registration and other charges.

M/s.Suyojit Buildtech Pvt.Ltd. also agreed to hand over the entire property, after expiry of lease period of 99 years, with the construction thereon to the trustees.

12. After considering the aforesaid tender submitted by M/s.Suyojit Buildtech Pvt.Ltd., the Trust in its meeting dated 11th August, 2002 appears to have considered revised rates and benefits offered by M/s.Suyojit Buildtech Pvt.Ltd. and took decision to award contract to the Builder and Developer.

13. The Trust submitted its application to the Joint Charity Commissioner to seek necessary

sanction under section 36(1)(b) of the Trust Act for development and to lease out the Trust property to the said contractor - M/s.Suyojit Buildtech Pvt.Ltd.

14. Some of the objectors appeared before the Joint Charity Commissioner and filed their objections to oppose grant of sanction in favour of the Trust. The objectors were: Al-Haj Ajmal Sarfaraj Khan and Wasim Sujauddin Pirjada (petitioners in Writ Petition No.6518.2003); A.R.Khan Construwell Company (petitioner in Writ Petition No.6458/2003); M/s.Silver Realtors Pvt.Ltd. and M/s.National (India) Contractors & Engineers. At this stage it is relevant to mention that none of the objectors had purchased tender forms or submitted their tenders.

15. The Joint Charity Commissioner after hearing the objectors was pleased to accord his sanction and approval to the proposal of the Trust vide his order dated 26th June, 2003 and granted permission to the Trust to go ahead with their decision, whereby the Trust had resolved to grant development rights in favour of highest bidder, namely, M/s.Suyojit Buildtech Pvt.Ltd. However, the learned Joint Charity Commissioner while granting his sanction, considering larger interest of the Trust, was pleased to enhance cash components and

raised it to Rs.7,25,00,000/- and directed the trustees and M/s.Suyojit Buildtech Pvt.Ltd. to execute lease and development agreement within three months from the date of the order and further directed the Developer to bear all expenses for necessary permission, Sanad, Nazarana deposit, development charges and the charges as agreed which may be payable to the municipal corporation for development of the Trust property together with stamp duty and registration charges, etc.

16. In view of aforesaid order of the Joint Charity Commissioner dated 26th June, 2003, the Executive Committee of the Trust in its meeting dated 3rd July, 2003 resolved to instruct their Advocate and Architect to prepare draft of agreement. The draft agreements were prepared and placed before the General Body of the Trust for its approval. The General Body of the Trust in its meeting held on 13th August, 2003 resolved to authorise Executive Committee to enter into an agreement with M/s.Suyojit Buildtech Pvt.Ltd. as per the order of the Joint Charity Commissioner.

17. The Trust, accordingly, entered into an agreement with M/s.Suyojit Buildtech Pvt.Ltd. and the said agreement was finally approved by the Executive Committee in its meeting dated 25th

August, 2003 and finally resolved to grant power of attorney in favour of the said Builder and Developer. The building plans were approved on 3rd September, 2003 and, ultimately, development agreement was executed by 7 trustees in favour of the M/s.Suyojit Buildtech Pvt.Ltd. on 6th September, 2003 on behalf of Trust and documents were submitted to the Sub-Registrar of Stamps for adjudication. It also appears that M/s.Suyojit Buildtech Pvt.Ltd. has deposited Rs.50,00,000/- (rupees fifty lakh only) with the Trust as per the tender terms and offered to deposit more amount, the details of which are as under:

Details of Cheque/D.D.	**Amount**
D.D.No.6476 dtd. 19th July, 2003 drawn on Janakalyan Co-op. Bank, Nashik.	Rs.20,00,000/-
D.D.No.629759 dtd. 19th July, 2003 drawn on Andhra Bank.	Rs.30,00,000/-
Cheque No.0600909 dtd. 4th October, 2003 drawn on S.B.I., Nashik Main Branch.	Rs.95,00,000/-
Cheque No.0600910 dated 4th October, 2003 drawn on S.B.I., Nashik Main Branch.	Rs.50,00,000/-

It appears that last two cheques of Rs.95,00,000/- and Rs.50,00,000/- are still lying with the Trust without encashment on account of directions given by this Court during the course of initial hearing.

18. The aforesaid action of the Trust and the order of the Joint Charity Commissioner dated 26th June, 2003 granting his sanction under section 36(1)(b) of the Trust Act are the subject matter of challenge in all the three writ petitions filed under Article 226 and 227 of the Constitution of India.

The Challenges :
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19. The challenges set up in all the three petitions are more or less common. The principal contention of the petitioners appear to be that the properties of the Trust are being leased out at throw away price. That the scheme of development adopted by the Trust is neither in the interest of the Trust nor in the interest of beneficiaries thereof. That the learned Joint Charity Commissioner did not apply his mind to the conditions incorporated in the tender invitation, which, according to the petitioners, were clearly in favour of M/s.Suyojit Buildtech Pvt.Ltd. to whom the Trust wanted to lease out their property for development for extraneous consideration. That the interest of the Trust, according to the petitioners, ought to have been the paramount consideration while considering the issue of grant of sanction under section 36(1)(b) of the Trust Act by the Joint Charity Commissioner. That he did not take into

account the interest of the Trust and, mechanically, granted sanction without application of mind to the facts and circumstances of the case.

20. In Writ Petition No.6518/2003, some additional contentions are raised to contend that the Trust was not competent to give away entire property of the Trust for development and that the grant of property on lease of 99 years to M/s.Suyojit Buildtech Pvt.Ltd. is not a prudent commercial decision as such the same is liable to be quashed and set aside apart from the fact that it is malafide and not in the interest of Trust. The petitioners in this petition filed one affidavit of Mr.Shyam B. Chapalkar, Partner of M/s.B.M.Chapalkar & Co. dated 30th July, 2004 stating therein that his firm is a Class-I Contractor recognised by P.W.D. of the Government of Maharashtra and expressed his willingness to offer rate @ Rs.1,857/- per sq.ft. and offered to pay rupees eight crore by way of cash component. He also offered to deposit rupees one crore with this Court to show his bonafides.

21. In Writ Petition No.6458/2003 filed by M/s.A.R.Khan Construwell Co., the contention sought to be raised is that the Condition No.29(VI) of the tender invitation had an effect of restricting the

field of choice and that of the competitors. In view of this condition, only specified group of contractors were permitted to submit their tenders. With the result, majority of the contractors, who are not registered with the P.W.D. of Government of Maharashtra but have an equal amount of experience and business were left out from consideration. They were deprived of their right to compete with others. The petitioners in this petition have, before this Court, initially, offered to pay Rs.7,25,00,000/- (rupees seven crore twenty five lakh only) and after offer of M/s.M.B.Chapalkar & Co. went on to enhance it to Rs.8,00,00,000/- (rupees eight crore only). The petitioners also made certain personal allegations against some of the trustees of the Trust and also imputed certain bad motives. With the aforesaid pleadings on record, these petitions were heard. Let me now proceed to recapitulate the rival submissions.

Submissions :
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22. The principal contentions were canvassed on behalf of petitioners by Mr.Ravi Kadam in Writ Petition No.6459/2003 as stated hereinabove. He was supported by Mr.S.G.Deshmukh and Mr.S.S.Kulkarni, learned counsel for the petitioners in other two petitions.

23. The contentions in detail on behalf of respondent - Trust were canvassed by Mr.M.H.Shah, senior counsel appearing with R.V.More; whereas Mr.V.R.Manohar, senior counsel with Mr.V.A.Gangal appeared for M/s.Suyojit Buildtech Pvt.Ltd. Mr.A.H.Palekar, A.G.P. appeared on behalf of the State and Joint Charity Commissioner. The other respondents, namely, M/s.Silver Realtors Pvt.Ltd.; M/s.National (India) Contractors & Engineers and New Education and Welfare Society, Nasik are concerned, did not put up their appearances, though served.

24. The main points argued in these petitions in support of the contesting petitioners can be catelogued as under:

. Mr.Ravi Kadam, learned counsel appearing in Writ Petition No.6459 of 2003 on behalf of the petitioners, said to be the beneficiaries being members of the community, would submit that the Trust property is situated in the heart of the Nasik city. Considering its location in prime locality, the price which has been offered by M/s.Suyojit Buildtech Pvt.Ltd. is too far below the prevailing market price. In other words, the Trust property is being leased out at throw-away price and that the trustees are not protecting the interest of the Trust. He submits that respondent No.2 therein M/s.Silver Realtors Pvt.Ltd. had offered an amount

of Rs.2,278.60 per sq.ft. totalling to Rs.9,15,67,860/-. The said tenderer had also objected to the sanction in favour of M/s.Suyojit Buildtech Pvt.Ltd. He also submits that the offer given by respondent No.3 therein viz. M/s.National (India) Contractors & Engineers was @ Rs.2,297.86 per sq.ft. could not have been rejected either by the Trust or the Joint Charity Commissioner since it was a better offer than that of M/s.Suyojit Buildtech Pvt.Ltd.

25. Mr.S.S.Kulkarni, learned counsel for the petitioners in Writ Petition No.6458/2003 submits that the paramount consideration under section 36 of the Trust Act is advancement of interest of the Trust. In his submission, it is consistently held by this Court that terms and conditions of alienation can be examined by the Charity Commissioner. It was, thus, his duty to examine legality of the terms and conditions which were put in the tender invitation by the Trust and to examine whether or not it was put with a view to favour M/s.Suyojit Buildtech Pvt.Ltd. In his submission, the learned Joint Charity Commissioner has completely overlooked these important aspects of the matter and unnecessary went on to discuss as to whether or not the condition is auxiliary and ancillary, which was not in issue.

26. Mr.Kulkarni further submits that without determining the main issues, it was not open for the Joint Charity Commissioner to proceed to consider merits and/or demerits of application filed under section 36(1)(b) of the Trust Act. He, thus, submits that having regard to the interest of the Trust, the offerer of the highest lease premium ought to have been considered. He submits that if the object was to receive best market price and highest lease premium, then clause 29(vi) of the tender invitation is contrary to the very object sought to be achieved. In his submission, it is absurd to presume that the contractor holding "A" class certificate of the Public Works Department ("P.W.D." for short) of the Government of Maharashtra alone can provide good quality work. According to him, a person other than the persons recognised as Class-A Contractor by the P.W.D. of the State, who are in the business of development of the properties and having turnover of crores of rupees are not expected to compromise on quality of work since they are always concerned about quality of their work, reputation and goodwill. He submits that in view of the extraneous terms and conditions prescribed in the tender invitation, the Trust has been deprived of its right to receive good amount of

genuine offers from the open market, with the result, it did not get highest bid. In his submission, learned Joint Charity Commissioner ought to have held open bid by calling upon petitioners (A.R.Khan Construwell Company) and like persons including M/s.Suyojit Buildtech Pvt.Ltd. to take part in the spot auction. In his submission, impugned order being arbitrary and contrary to the interest of the Trust is liable to be quashed and set aside.

27. Mr.S.G.Deshmukh, learned counsel for the petitioners in Writ Petition No.6518/2003 submits that entire exercise done by the Trust is malafide and is in collusion with the M/s.Suyojit Buildtech Pvt.Ltd. He submits that Mr.S.L.Deshpande, Advocate, who had been acting as Legal Adviser of M/s.Suyojit Buildtech Pvt.Ltd. was deliberately appointed to act as an Advocate/Legal Adviser of the Trust for the purposes of preparing the tender documents in such a manner that it will accommodate M/s.Suyojit Buildtech Pvt.Ltd. alone and would exclude other builders irrespective of the fact that they are professionally and financially better than M/s.Suyojit Buildtech Pvt.Ltd.

28. Mr.Deshmukh further submits that the term set out in clause 29(vi) requiring offers from

the holders of certificate as "A" Class Contractor with Public Works Department of the State Government was really irrelevant for the purposes of receiving best offers. According to him, only those builders, who deal with Government contracts, can have certificate of "A" Class Contractor. In his submission, most of the professionally competent and financially sound builders and developers are, normally, not interested in Government contracts. If that be so, they are not expected to have certificate of "A" Class Contractor though, most of the times, they are much better than the Government contractors. He submits that by putting such condition, large number of offerers have been kept away right from the stage of offer itself as such the Trust is deprived of having better offers from better and competent builders and developers. He submits that after conveniently shortlisting the offerers, the number was reduced to four offerers only. The Trust chose to negotiate only with M/s.Suyojit Buildtech Pvt.Ltd. and finalised its deal without safeguarding the interest of the Trust.

29. Mr.S.G.Deshmukh further submits that the tender notice published by the Trust was also misleading. Although the Trust had taken a decision to develop the property by leasing it out for a period of 99 years, the said notice nowhere referred

to the lease period of 99 years. It merely referred to the development of the property of the Trust.

30. In his submission, there are serious allegations of mismanagement against the trustees of the Trust who have entered into the transaction with M/s.Suyojit Buildtech Pvt.Ltd. According to him, necessary enquiry in respect of the said allegations is pending with the Charity Commissioner, as such, in his submission, learned Joint Charity Commissioner ought not to have granted sanction and/or permission to the said trustees to deal with the property of the Trust.

31. Mr.Deshmukh further submits that learned Joint Charity Commissioner failed to appreciate the objections raised by the petitioners and other objectors. In his submission, he went on to enhance the offer of Rs.6,74,56,219 given by M/s.Suyojit Buildtech Pvt.Ltd. to Rs.7,25,00,000/-, perhaps with a view to create a picture of reasonableness and application of mind.

32. Lastly, Mr.Deshmukh submits that the transaction entered into by the Trust with M/s.Suyojit Buildtech Pvt.Ltd. is bad in law and not in the interest of the Trust and is required to be struck down. He, thus, urged that the impugned

order be quashed and set aside and the Trust be directed to start entire process afresh by deleting the condition regarding requirement of being a holder of certificate of "A" Class Contractor from the Public Works Department of the Government.

Per Contra :
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33. Mr.M.S.Shah, senior counsel appearing for the Trust and Mr.V.R.Manohar, senior counsel for M/s.Suyojit Buildtech Pvt.Ltd. urged that the petitioners in all the three petitions have agreed that considering the increasing need to accommodate more Muslim boys students, the fact that the earlier accommodation could hardly accommodate 35 students, the building being dilapidated and that the Trust having no other source of income, it became necessary to develop the said property and construct a bigger hostel for the Muslim (boys) students. All other objectors including two of the petitioners were also of the view that alienation by lease by inviting tenders was proper. Only two objectors, namely, Al-haj Ajmal Sarfaraj Khan and Wasim Sujjauddin Pirjade (petitioners in Writ Petition No.6518/2003) had objected on the ground that the hostel could be constructed without alienating the property by raising loan from Maulana Azad Foundation Trust of Delhi. But none of them could produce any documents in support of their claim in

that behalf. However, now after making enquiries with the said Maulana Azad Foundation Trust, the respondent No.1 - Trust found that they did not have any scheme for such project. In their submission, learned Joint Charity Commissioner has correctly rejected submissions of the petitioners made in this behalf and rightly came to the conclusion that the need to develop the Trust property and alienate it by lease was well established and that there was an existing legal necessity to construct a new building for accommodating about 200 muslim students.

34. In the submission of the Trust and the Builder and Developer (M/s.Suyojit Buildtech Pvt.Ltd.), the real objection was to Clause No.29(iv) of the tender document. While replying to the said objection, learned counsel for the Trust submitted that this aspect is fully covered by various judgments of this Court. The inclusion of this clause was absolutely necessary as the trustees wanted a contractor having a well established business and reputation of a particular class with financial capacity to develop the Trust property. The reason behind, one of the conditions of the lease, was that the foundation should be able to take load of the ground plus 3 storeys of the building since the building, after completion of 99 years of lease, is to come back to the Trust along

with construction. Moreover, the entire basement is to be used by the trustees for parking vehicles which is going to be a permanent source of income for the trust. The basic object of the Trust being to accommodate the Muslim boys students in the hostel as such it was necessary for the Trust to go for a reputed contractor only. In the submission of the Trust, the Joint Charity Commissioner has considered the above aspect in detail and held that the submissions of the objectors objecting to condition in Clause 29(iv) of the tender form were not well founded and sound and, therefore, repelled the same.

35. Mr.Shah appearing for the Trust submitted that Shri S.L.Deshpande, Advocate of Nasik is one of the reputed, well known lawyer mostly working for most of the builders of the region in general and Nasik in particular, therefore, the Trust thought it fit to appoint an Advocate who is expert in the laws of development of the properties.

36. Mr.Shah submits that M/s.Suyojit Buildtech Pvt.Ltd. may be one of his clients with other builders but that by itself does not mean that he was picked upon only to favour M/s.Suyojit Buildtech Pvt.Ltd. He submits that none of the trustees were aware of it. He further submits that,

if the criteria adopted by the petitioners is applied and their objection in this behalf is upheld, then the Trust will never be able to engage good available lawyer, especially, considering the fact that the Nasik is a small city compared to Mumbai or Delhi where large number of good advocates are available. Secondly, it is not possible to engage lawyer considering the list of his clients. It was not known to the Trust as to who were likely bidders when Mr.Deshpande, Advocate was retained by the Trust.

37. It is further submitted on behalf of Trust and M/s.Suyojit Buildtech Pvt.Ltd. that after the order of the Joint Charity Commissioner dated 26th June, 2003 the parties, namely, the trustees of the Trust have already executed the development agreement in favour of M/s.Suyojit Buildtech Pvt.Ltd. within the stipulated time. M/s.Suyojit Buildtech Pvt.Ltd. has already deposited Rs.50,00,000/-. It has further deposited cheque of Rs.1,45,00,000/- with the Trust which were not encashed on account of the direction of this Court and the cheques are lying with the Trust.

38. As regards the highest and successful bidder, namely, M/s.Suyojit Buildtech Pvt.Ltd., Mr.Manohar submits that the said bidder is not only

having a registered certificate of "Class I-A" Contractor of the Government P.W.Department but is the only construction company in Nashik city which has a certificate of accreditation issued by the International Standard Organization i.e. ISO 9001 (2000). The said company is functioning in the construction line since the year 1994 and its annual turnover is Rs.18 to 20 crore and net worth is more than Rs.10 crore. It is registered as Class "I A" (unlimited capacity with P.W.D.). It has to its credit several prestigious and important construction projects developed in the Nashik city including "Suyojit Sankool" and "Suyojit Circle". It has also constructed several commercial constructions including important banks in the Nashik city.

39. As against this, he submits that one of the petitioners, namely, M/s.A.R.Khan Construwell Company does not qualify himself. The income-tax documents filed by it show no income from the partnership firm. The relevant aspect emerging from the documents is only the income shown from various gifts received from unidentified sources. According to him, this speaks volumes about the financial dealings of M/s.A.R.Khan Construwell Company. In his submission, the petitioners are not bonafide contractors or builders. He submits that this Court

has repeatedly held that the petitioners, who do not have any interest in the property have no locus standi to file such petition. He further submits that it is not open for the Court to consider uninvited offers by third party except for ascertaining the price of the property. The other two petitioners claim to be the social workers and beneficiaries. They have no interest in the Trust. They are not even builders of any repute.

40. Mr.Manohar further submits that M/s.Suyojit Buildtech Pvt.Ltd. has already entered into agreement. The Trust has created third party interest before the status-quo order was granted by this Court. Upsetting the order of the Joint Charity Commissioner will involve undesirable consequences including multiplicity of legal proceedings resulting into tremendous waste of time, money and energy of all the parties concerned.

41. Learned counsel for the Trust and Builder and Developer, viz., M/s.Suyojit Buildtech Pvt.Ltd. further submit that None of the petitioners were qualified to get the said development and construction work. They did not participate in the tender process, therefore, they have no right to challenge the impugned order of the Joint Charity Commissioner. In conclusion, learned

counsel submitted that the need for development of the property and the existence for the necessity of alienation has clearly been established. That the trustees have followed the procedure for inviting tenders scrupulously and with complete transparency. That the tender documents were prepared by experts. In the larger interest of the Trust full tender procedure was meticulously followed by the trustees. That none of the objectors had even purchased a tender form much less participated in the tender process. That none of of the petitioners were qualified to get the said development and construction work. That no rights of the petitioners are violated. That the petitioners' challenges are speculative in nature and not bonafide. None of them having any technical qualification or commercial capacity to do the work of huge magnitude. In their submission, the Joint Charity Commissioner has considered all the aspects of the matter and all the objections raised by the objectors were thoroughly considered in the light of the documents on record based on the well settled judicial norms. He has also considered the interest of the Trust. He has enhanced the cash component from Rs.6,74,56,210 to Rs.7,25,00,000/- i.e. nearly by Rs.50,00,000/- plus he has imposed additional conditions on the said successful bidder. That the successful bidder, namely, M/s.Suyojit Buildtech

Pvt.Ltd. has already spent large amounts. They were held eligible and qualified as highest bidder fulfilling all the terms and conditions of the tender invitation as such none of the petitions deserve any consideration and the same are liable to be dismissed.

The Issue :
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42. The real main and substantial issue between the parties revolve around the validity of sanction under section 36(1)(b) of the Trust Act and legality of the condition or Clause 29(vi) of the tender invitation notice and consideration thereof by the learned Joint Charity Commissioner.

Contours of Judicial Review :
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43. Before proceeding to consider the rival submissions, it is necessary to determine the contours of judicial review under Articles 226 and 227 of the Constitution of India vis-a-vis terms of tender prescribing eligibility criteria. Whether the Joint Charity Commissioner could have changed the terms of tender invitation or document framed by the Trust on the ground of its being inappropriate and that the objective would be better served by adopting a different eligibility criteria.

44. In order to consider this question in its proper perspective, it would be profitable to refer to the recent judgment of the Apex Court in the case of **Directorate of Education v. Educomp Datamatics Ltd.**, AIR 2004 SC 1962; relied upon by Mr.Manohar appearing for the successful bidder viz. Builder and Developer; wherein an identical question with respect to the judicial review permissible in exercise of jurisdiction under Article 226 of the Constitution of India to the terms of invitation to tender prescribing eligibility criteria was a subject matter of judicial scrutiny.

45. In the above case the Directorate of Education had invited open tender with prescribed eligibility criteria in general terms and conditions under tender document for leasing of supply, installation and commissioning of computer systems, peripherals and provision of computer education services in various Government and Government aided schools. 748 schools were to be covered under the programme. Since the expenditure involved per annum was to the tune of Rs.100/- crore the competent authority took a decision that tenders be invited from the firms having a turnover of more than Rs.20/- crore over the last three years. The criteria of turnover of Rs.20/- crore was prescribed

to enable the companies with real competence having financial stability and capacity to participate in the tender. The eligibility condition prescribed in the tender was challenged.

46. The Apex Court in the above case refused to strike down the term prescribing eligibility criteria providing for a turnover of at least Rs.20/- crore on the ground that term did not have a nexus with either the increase in the number of schools or the quality of education to be provided. The Apex Court found that as a matter of policy Government had taken a conscious decision to deal with one firm having financial capacity to take up such a big project instead of dealing with multiple small companies which was very much a relevant consideration while awarding such a big project. Apex Court ruled that it was for the authority to set up the terms of the tender. The observations of the Apex Court in this behalf are as under:

> " The terms of the invitation to tender are not open to judicial scrutiny the same being in the realm of contract. The Govt. must have a free hand in setting the terms of the tender. It must have reasonable play in its joints as a necessary concomitant for an administrative body in an administrative sphere. The Courts would interfere with the administrative policy decision only if it is arbitrary, discriminatory, mala fide or actuated by bias. It is entitled to pragmatic adjustments which may be called for by the particular

> circumstances. The Courts cannot strike down the terms of the tender prescribed by the Govt. because it feels that some other terms in the tender would have been fair, wiser or logical. The Courts can interfere only if the policy decision is arbitrary, discriminatory or mala fide."

47. In the aforesaid case, the Apex Court held that it is for the authority to set up the terms of the tender. The Courts should not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. In the very case the provision of term providing a turnover of at least Rs.20/- crores was affirmed.

Consideration :

48. Having considered the contours of judicial review set out by the Apex Court for exercise of jurisdiction under Articles 226 of the Constitution to the terms of tender prescribing eligibility criteria, it cannot be ignored that the jurisdiction of the writ Court under Article 226 is wider than the jurisdiction of the Charity Commissioner under the provisions of section 36 of the Trust Act.

49. What needs to be considered is: the obligation cast upon the Charity Commissioner under the provision of section 36(1)(b) of the Trust Act

while . The relevant provision of section 36 read thus:-

> "**36. Alienation of immovable property of public trust.**
>
> (1) Notwithstanding anything contained in the instrument of trust-
>
> (a) ....
>
> (b) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner. Sanction may be accorded subject to such condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust;
>
> (c) .... "

In the above section 36(1)(b); no lease for a period exceeding three years in case of building belonging to a public trust is valid without the previous sanction of the Charity Commissioner. The Charity Commissioner may accord sanction subject to such condition he may think fit to impose, regard being had to the interest, benefit or protection of the trust.

50. Rule 24 of the Rules under the Act is framed specifically with regard to the application to be made under section 36. It sets out what every application for sanction must contain. Clause (2) of the said rule empowers the Charity Commissioner,

before according or refusing to accord sanction, to make such enquiry as he deems necessary.

51. Under the terms of section 36 read with rule 24, the Charity Commissioner is concerned only with according or refusing sanction to the particular lease which the trustees propose to make. It is a proceeding which only concerns the trustees. To decide whether such lease is in the interest of the Trust, he is empowered to make such enquiry as he deems necessary. It is for the trustees to decide whom they should lease the property to, subject to the Charity Commissioner's sanction to the proposed transfer. If the Charity Commissioner needs, before according or refusing sanction, to ascertain the market price for the property proposed to be leased, he may issue such directions as he thinks necessary and it is obligatory upon the trustees to comply with those directions.

52. Considering the sweep of section 36 as dissected hereinabove, the jurisdiction of the Charity Commissioner cannot be elevated or treated on par with that of the jurisdiction of writ Court. But in this case, giving little larger scope to the area of judicial review, but confining to the boundaries of judicial review laid down by the Apex Court in the case of **Directorate of Education**

(Supra), I propose to examine the legality and validity of the impugned order passed by the Joint Charity Commissioner which is a subject matter of challenge in these petitions.

53. The extent of judicial revi permissible in contractual matters while inviting bids by issuing tenders has also been examined in depth by the Apex Court in the case of **Tata Cellular v. Union of India**, 1994 (6) SCC 651 and after examining entire case law the following principles have been deduced:

(1) The modern trend points to judicial restraint in administrative action.

(2) The Court does not sit as a Court of appeal but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively be experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body

functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

54. In **Air India Limited v. Coc**

International Airport Limited, 2000 (2) SCC 617, the Apex Court observed that the award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. In this case contract was awarded by private Trust to a private contractor. Commercial consideration has played its own role cannot be ignored. The only area available for judicial scrutiny is: whether arbitrariness or favouritism has been practised by the Trust. Thus, the impugned order needs to be judicially scrutinised only to find out whether appointment or engagement of Mr.S.L.Deshpande, Advocate of Nasik and incorporation of Condition No.29(VI) in the tender invitation have been shown to be arbitrary and affected by bias or actuated by malice.

55. Let me first consider the question involving legality of Condition No.29(VI) of the tender invitation for development of the Trust property. The said clause reads as under:

> "29. The offerer will have to submit following information separately:-
>
> i) ....
>
> ii) ....
>
> iii) ....
>
> iv) ....
>
> v) The offer must have minimum turn over of Rs.200 Lacs per year for last five years.
>
> vi) Registration certificate, as "A" class contract with Govt. PWD department."
>
> (emphasis supplied)

The trustees of a charitable trust are required to act as persons of ordinary prudence and as reasonable persons entrusted with responsibility. If the project of the trust does not go to its logical end for years together, the trust would suffer more than any other person. The trustees, considering the magnitude of their development project, are expected to take decision without taking any risk as such the trustees of the Trust were bound to incorporate such conditions in the tender document which will help them to get the best possible experienced and financially sound contractor and who shall not come in the progress of

the project. It is normally expected that a "A" Class Contractor working with P.W.D. of the State Government, who has executed contracts worth more than Rs.20 crore in a year for past five years would be experienced and financially sound contractor. Keeping this aspect in mind, if the said condition was put in the tender document, in my view, no fault can be found with the said decision of the Trust. In this view of the matter, it is enough for this Court to observe that the trustees have acted in bonafide and reasonable manner while incorporating the said condition.

56. If the contractor of a good repute is allowed to develop the property the possibility of completion of proposed project in a reasonable period without legal complications cannot be ruled out. The person, who is successfully holding certificate of "A" Class Contractor for a reasonable period of five years and who is regular in filing his income-tax returns, is normally expected to be a person of good repute with sound financial capacity. If all these considerations weighed with the Trust to incorporate such condition, in my view, no fault can be found with the same.

57. Apart from the above, during the course of hearing, the parties to the petitions were asked

to produce any willing contractor from any category other than the category of contractors holding certificate of "A" class of P.W.D. having executed works of the same magnitude in the past five years. None of the petitioners could produce any such contractor before this Court.

58. The petitioners in Writ Petition No.6518/2003 produced affidavit of one person Mr.S.B.Chapalkar said to be partner of M/s.B.M.Chapalkar & Co. expressing his readiness to offer rate @ Rs.1,857/- per sq.ft. totalling to Rs.8 crore only. The said contractor has stated on oath that their firm is duly registered with the P.W.D. of Government of Maharashtra as "Class-I" contractor.

59. So far as M/s.B.M.Chapalkar & Co. is concerned, they were falling within the sweep of the condition prescribed by the trust. If that be so, nothing prevented them from purchasing a tender form at the cost of Rs.10,000/- and compete with other tenderers. They are not from the excluded category. No reasons are disclosed in the affidavit as to why they did not submit their tender. Why they failed to compete with others. The offer submitted by M/s.B.M.Chapalkar does not advance the case of the petitioners. The case of the petitioners is that in

view of condition No.29(vi) the persons or the contractors other than the contractors holding "A" class certificate were deprived of their right to compete. No such persons has come before this Court. The person, who is produced before this Court, viz., M/s.B.M.Chapalkar & Co. cannot be said to be a person falling in that category as such offer submitted by M/s.B.M.Chapalkar & Co. cannot be considered at this stage.

60. So far as the offer submitted by the petitioners in Writ Petition No.6458/2003, namely, M/s.A.R.Khan Construwell Co. is concerned, the same was already before the Joint Charity Commissioner. For the good reasons recorded in the order, it was rejected by him. The said petitioners want that the impugned order be set aside and the Trust be directed to go for open bid. The said petitioners have further enhanced their offer from Rs.7,75,00,000/- to Rs.8,00,00,000/-. The petitioners are not "A" class contractor. The trustees of the Trust are not willing to accept their offer. Nobody can be asked to enter into contract against his will.

61. At this juncture, it will not be out of place to mention that this Court at one stage was willing to consider the genuine offer of a genuine

contractor coming before this Court. But not a single genuine offer was produced before this Court barring two referred to hereinabove. For this purpose delivery of judgment was withheld for sometime. It is, thus, clear that no genuine offer muchless from the person falling in the category other than "A" Class Contractor was produced before this Court. The offer of M/s.B.M.Chapalkar & Co. can hardly be said to be a genuine offer for want of explanation as to why they did not take part in the tender process, if they were keen to undertake this tender work.

62. Let me now travel to the next issue relating to the engagement of Mr.S.L.Deshpande, Advocate, Nasik to examine as to whether engagement or retention of Mr.Deshpande to draft tender document was actuated by any bias. At this juncture, will not be out of place to mention that the P.W.D. of Government of Maharashtra has about more than 200 contractors registered with them as "A" class contractors. Almost more than 14 "A" class contractors purchased tender forms on payment of Rs.10,000/- each. Out of 14 "A" class contractors, 8 submitted their bids. Ultimately, almost "A" class contractors numbering eight(8) were in the ring of competition till end, out of which 4 went to the extent of litigating with the Trust till

the termination of proceeding under section 36 of the Trust Act. In this backdrop, the question which needs consideration is: whether the engagement of Mr.S.L.Deshpande, Advocate, Nasik was merely for the benefit of M/s.Suyojit Buildtech Pvt.Ltd. so as to eliminate others from the competition.

63. The city of Nasik, no doubt, is a district place, but the growth of concrete jungle in the said city is a recent development. Very few lawyers are available who can be said to have expertise in drafting documents meant for development of huge projects involving heavy stakes. In a district place, most of the lawyers, especially, practising in property matters are normally known to the property developers. Sometimes they appear for them, sometimes they appear against them in different litigations. Due to socialisation they also develop acquaintances with elite of the city. On this canvass, another question which needs consideration is: can it be said that a particular lawyer was engaged or retained by the Trust only with a view to benefit a particular developer, that too; only because one of his clients happened to be the successful bidder.

64. Mr.Deshpande being an advocate and legal practitioner of good repute and standing may have

number of builders as his clients. In the circumstances, can it be inferred bias of the Trust in favour of M/s.Suyojit Buildtech Pvt.Ltd., merely because professional services of one advocate of good standing were availed by the Trust. The facts of this case would, unequivocally, prove that more than 14 "A" class contractors lifted tender documents; out of them 7 filed their tender bids; out of them 4 prosecuted their rights before the Joint Charity Commissioner. All these circumstances are sufficient to reach to the conclusion that the contentions advanced by the petitioners in this behalf have absolutely no force.

65. In this particular case the Trust had made the field wide open to the Joint Charity Commissioner by submitting that the Joint Charity Commissioner may consider any offer if found best in the interest of the Trust. In the wake of these circumstances, can it be said that the Trust wanted to favour any one contractor. There is absolutely no case made out by the petitioners in this behalf.

66. With the aforesaid finding, let me consider whether any case of malafide against any of the trustees is made out by the petitioners. Not a single trustee in his personal capacity has been joined as party respondent in any of the petitions.

Not a single averment worth consideration is made against any particular trustee. Needless to mention that the law is well settled that if any allegations of malafides are to be made against anybody he must be made as party respondent in his personal capacity so as to enable the Court to investigate those allegations or contentions. At the same time, the person against whom allegations are made also gets a fair opportunity to defend himself. This course has not been adopted by any of the petitioners. The allegations of malice made are general and vague which can easily be made by any person against anybody. In this view of the matter, allegations of malice are liable to be rejected.

67. Having considered the available field for judicial scrutiny or judicial review, let me consider locus of the petitioners to file these petitions to challenge the action of the Trust or the order of the Joint Charity Commissioner.

68. Under section 36 of the Trust Act, it is not open to the Charity Commissioner to consider uninvited offers from third parties except for ascertaining the market value of the deal in question. It is certainly not open to the Charity Commissioner to grant land of the Trust on lease to any person he likes. The Charity Commissioner has

no power to require the trustees to lease or sell the trust land to any one other than the person selected by them. If he considers the proposal of any other person other than the person selected by the Trust, it would work adverse to the interest of the Trust. Jurisdiction of the Charity Commissioner is either to grant or decline to grant permission for the reasons to be recorded. As already stated hereinabove, the Joint Charity Commissioner was given free hand to consider any offer, if found best in the interest of the Trust. Taking advantage of the said offer made by the Trust various offers presented before him were considered by the Joint Charity Commissioner and, ultimately he found the offer submitted by M/s.Suyojit Buildtech Pvt.Ltd. as proper and in the interest of the Trust. Under these circumstances, can it be said that the order of the Joint Charity Commissioner suffers from non-application of mind or that he did not take into account the interest of the Trust. In my view, the submissions made by the petitioners in this behalf hold no water apart from the fact that none of the legal rights of at least those petitioners who are claiming to be the developers have been infringed by the impugned order.

69. It must also be remembered that respondent No.1 - Trust is a public charitable

trust. If any interest of the beneficiaries is affected, then only the restricted class of its beneficiaries would be entitled to move the Court. This is not a case where public interest in its wide sense is involved or the public rights of a large, almost unrestricted body of individuals, is involved. Let me now examine the bonafides of the petitioners falling in the category of beneficiaries. The petitioners in Writ Petition No.6459/2003, namely, Mr.Ahmed Dagumiya Shaikh, Mr.Murtaz Abdul Razak Chanegaon, Mr.Abdul Razak N.Chanegaon, Rafique N. Chanegav and Mr.Iqbal Gafoor Shaikh, all of them claiming to be the beneficiaries, have filed the said petition. In the petition they are challenging the order of the Joint Charity Commissioner but in substance they are trying to canvass the case of respondent Nos.2, 3 and 6 herein, though none of them, in spite of due notices, chose to remain present before this Court. The present petitioners did not file any objection before the Joint Charity Commissioner. If that be so, in my opinion, these petitioners have no right to challenge the action of the Trust for the first time before this Court and the order of the Joint Charity Commissioner at this stage. No explanation is on record as to why they did not prefer their objection to oppose grant of sanction under section 36 of the Trust Act. In my opinion, the petition

being Writ Petition No.6459/2003 is nothing but to canvass the case of the developers and not to project their own interest as beneficiaries. It is not a bonafide petition.

70. One M/s.Al-Haj Ajmal Sarfaraj Khan and Wasim Sujauddin Pirjada (petitioners in Writ Petition No.6518/2003) had filed their objections before the Joint Charity Commissioner. In their objections, they had gone to the extent of making statement in para-2 reading as under:

> "That the objectors were ready and willing to construct hostel without taking any money from the Trust and the objectors are ready and willing to construct hostel on the said trust property without taking any money from the said trust and the objectors are ready to construct the hostel on the said trust property which is the only purpose why the said trust property was given to the said trust and the main object and condition....."

It was not disclosed in the objections or in the petition bearing Writ Petition No.6518/2003 as to how and from where they proposed to mobilise finances for the construction of the hostel and how they would realise their investment from the project. The donation from one Delhi based Trust known as Maulana Azad Foundation for construction of Youth Hostel without any genuine document on record does not inspire judicial confidence. The said story has no legs or foundation to stand.

71. M/s.A.R.Khan Construwell (petitioners in Writ Petition No.6458/2003) were also one of the objectors before the Joint Charity Commissioner. They did not and do not have certificate of "A" class contractor. They neither purchased tender form nor submitted their tender. The only income shown by them is from various gifts received from unidentified sources. No income from the alleged business of construction is to be found.

72. The other objector M/s.Silver Realtors Pvt.Ltd. did not have certificate of "A" class contractor from the P.W.D. of Government of Maharashtra. They neither purchased tender form nor submitted their tender. Similarly, one M/s.National (India) Contractors and Engineers (Mr.Farooq Khan, objector No.2 before the Joint Charity Commissioner) is, no doubt, hold certificate of "A" class contractor but neither they purchased tender form nor submitted their tender bid, though they expressed their readiness to pay premium at about Rs.9 crore and odd before this Court.

73. On the above canvass, one more question which needs to be answered is: can the contractor, who neither purchased tender forms nor submitted his tender bid and thereby refused to compete with other

competitors, be allowed to enter into ring from back door, i.e., through present litigation. The answer, in my opinion, has to be in negative.

74. Assuming for the sake of argument that their offers, as on date, look little better than that of M/s.Suyojit Buildtech Pvt.Ltd., but that by itself is not sufficient to set at naught the entire exercise done by the Trust and the learned Joint Charity Commissioner.

75. M/s.Suyojit Buildtech Pvt.Ltd. has offered certain additional benefits in addition to the financial benefits. At the same time if the trustees of the Trust do not have confidence in those other offerers, can the trustees be compelled to accept the offers made by them. The answer has to be in negative, especially, when their refusal is based on valid reasons. Merely, for the sake of refusal they cannot refuse but for good reasons they can always refuse their offers. The good reason assigned by them is that it was open for the offerers to compete with others and that at this stage if offers are considered they will have to undertake entire exercise de novo, which is bound to affect their project and delay may affect project cost and possibility of litigation at subsequent stage cannot be ruled out. In the totality of the

facts and circumstances, the explanation offered is reasonable. The petitioners have no legal right to enforce. The Joint Charity Commissioner had no legal duty towards them. None of the petitioners can be said to be the aggrieved person.

76. Having regard to all the above factors, the Joint Charity Commissioner, in my opinion, rightly granted sanction to lease out the Trust property in favour of M/s.Suyojit Buildtech Pvt.Ltd. at enhanced price. The same cannot be faulted. The petitioners contention that acceptance of lower rates than that offered by the petitioners and others is contrary to the interest of the Trust also needs rejection.

77. In the result, the petitions are without any merits. All the three petitions are dismissed with no order as to costs.

78. At this stage, learned counsel for the petitioners prayed for continuation of status-quo as was operating in this case.

. Having heard rival parties and considering the issues involved, status-quo order already operating in favour of the petitioners is allowed to continue for another four weeks from today.

79. In the meanwhile, it will be open for respondent No.1 - Trust to encash cheques which were given by the Builder and Developer, if alive or may get it replaced from them. However, encashment of the cheques shall not create any equity in favour of respondent No.1 - Trust. The same shall be without prejudice to the rights of the petitioners.

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